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FEDERAL COMMUNICATIONS COMMISSION

Authorization and Evaluation Division

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November 28, 1994

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ET 93-235

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Mr. Charles H. Helein
Helein & Waysdorf, P.C.
1850 M Street, N.W.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Helein:

Thank you for your letter of October 7, 1994, concerning the Commission's pending proposal in ET Docket No. 93-235 to provide additional channels for cordless telephones.

We recognize that the cordless telephone industry is highly competitive and manufacturers would like to have as much advance notice as possible as to the scheduled timing of the Commission's decision in Docket 93-235. We have not as yet set a specific target for a decision in Docket 93-235. We anticipate it will be some time in the spring of 1995. We expect to set a more firm timetable in January and will let you and other industry representatives know of our plans at that time.

Please bear in mind that the comments in this proceeding raised several significant concerns such as potential interference to television broadcasting and the private land mobile service. Thus, the outcome is yet to be decided. Manufacturers that choose to design and manufacture equipment under the proposed rules do so at their own risk.

Please let me know if I can be of any further assistance.

Sincerely,

/s/

Julius P. Knapp, Chief
Authorization and Evaluation Division

cc: Ms. Ruth Milkman, MS 0101
JPKNAPP/lab:aed/div

Typed 11/29/94

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October 7, 1994

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 11 1994

COLUMBIA, MD

Via Hand Delivery

Karen Brinkman, Esq.
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W., Room No. 814
Washington, D.C. 20554

Re: 25 Channel Cordless Phone Rulemaking Proposal
ET Docket No. 93-235

Dear Karen:

You may recall that sometime before mid-July of this year I visited with you on behalf of my client, North American Foreign Trading Corporation (NAFTC).

NAFTC, directly or through subsidiaries or affiliates is a major supplier/distributor of electronic products to large national retailers and at least one major LEC. Among its many products, NAFTC companies supply major retailers with state-of-the art cordless telephones.

In December, 1993, NAFTC filed comments and replies in the docket supporting the allocation of additional frequencies for cordless phones. Since then, NAFTC has closely monitored the progress of the docket because of its significant concerns about the timing of final action in this docket by the Commission. Recent inquiries indicate that action is not imminent and that at the earliest action is not likely until well after the first of next year.

NAFTC looks forward to final action as soon as possible, but as we discussed this past July, our concerns center on being able to properly coordinate and plan production schedules with the release of final Commission action. The ability to coordinate and plan is absolutely essential to avoid stranding significant levels of 10 channel inventory or prematurely producing new 25 channel product.

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In addition, the inability to schedule proper lead times for new production or being trapped with inventories of "old" product has several harmful impacts on the public interest. In terms of the competitive environment, such uncertainty creates an opportunity for some suppliers/distributors to seek unfair marketplace advantages and to skew proper economic incentives. A consequence of such efforts can result in higher consumer prices.

For example, recently it has been reported that some off-shore manufacturers have begun to make component parts for 25 channel cordless phones. Since the United States is the only country able to make use of such technology, if it is true that 25 channel components are being produced or readied for production in the near term, it must be based on the belief that: (1) action by the Commission is imminent; and (2) action will change little, if any, of the important technical standards that have been proposed in Docket 93-235 for 25 channel cordless phones.

Another possibility is that some companies have the resources to "gamble" on adoption of rules based on the pending proposals in Docket 93-235 and to eat the losses if such action is delayed or other action taken. The purpose of such risk is of course to get to the marketplace first, which while an acceptable goal for any competitor, in this context is not economically efficient nor consumer oriented. Clearly, such strategy must include rolling the losses produced by such a "gamble" into the prices charged to consumers once new product is brought to the marketplace.

The problem is a very real one and involves significant investment not only for NAFTC, but others anxious to bring the benefits of increased cordless phone channel capacity to the American public. NAFTC, therefore, believes it would be in the public interest for the Commission to address these concerns.

Several comments in ET Docket No. 93-235 presented arguments on how to deal with this sort of production/delivery uncertainty in order to eliminate the economic and marketing dislocations it causes. These comments suggested that upon adopting the rules providing for 25 channel cordless phones, it also adopt a 6 to 12 month lead time before 25 channel product would be made available for sale in the United States.

This "lead time" approach would allow all suppliers to rationally plan their production and delivery schedules and to reduce inventories of lower channel phones. Admittedly, it has the result of potentially delaying the availability of the newer technology to the public, but there are equal, if not overriding public interest considerations.

First, the losses arising from stranding 10 channel inventory and or prematurely producing new product that must be warehoused until final action is taken by the Commission, or "trashed" if final action requires changes in design, circuitry, etc., must be recovered in the

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prices charged for the new 25 channel product. In addition, if those suppliers (who can afford to "gamble" to be the first to the marketplace) succeed, other suppliers who are not able to enter the marketplace for 6 to 12 months after final action is announced will not be able to provide any price competition during this same 6 to 12 month period.

Second, it should be clear that the advantages of "early entry," due solely to the scheduling of the announcement of final action, are a product not of superior engineering, more efficient distribution systems or better management, but are produced solely because of the vagaries of regulatory procedures and processes. In short, albeit unwittingly and without any motivations and intent, the regulatory process is directly and seriously handicapping competition in the marketing and sale of telephone equipment.

Third, both the Congress' and the Commission's continued efforts to give small businesses more of a meaningful stake in the telecommunications industry is undermined here. Only the largest suppliers stand to benefit from the uncertainty and unpredictability of the timing of final agency action in ET Docket 93-235.

Fourth, retailers also have to plan their merchandising of new products. Depending on when the Commission announces its action or impending action, retailers must and will react. The announcement of the coming availability of 25 channel product will result in cancellation of contracts for 10 channel product. (Retailers may cancel at any time before delivery.)

The impact on suppliers caused by the timing of such cancellations is different, but unfortunately, varies only according to the degree of damages caused to the supplier. If cancellation occurs in the middle of production of 10 channel units, the supplier must halt production or complete production as best it can and seek, if it can, new markets for the now "obsolete" or nearly "obsolete" product. If production is completed when the announcement is made of final action on 25 channels, the supplier must store the "old" product while it seeks new markets for it.

In any case, the supplier must arrange for a "retooling" of its production process which at a minimum requires redesigning circuitry, obtaining new chips and new semiconductors. This in itself can take 6 months before actual production can recommence which will add another 6 months before new product is available. It is for these reasons that NAFTC and others commented in ET Docket 93-235 that the Commission provide a lead time of 6 to 12 months before the rules for 25 channels become effective.

NAFTC recognizes that large suppliers are opposed to adopting the proposal for a 6 month lead time and acknowledges that (were it not for the adverse consequences outlined herein

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for the consumer and smaller suppliers) delaying availability after final action should be avoided.

NAFTC has, therefore, attempted to reconcile the tension created by this situation on a balanced and reasonable basis.

The need is to provide as much certainty as possible about the actual timing of final action. To do this fairly, the Commission could advise all commenters in ET Docket No. 93-235, that final action will be prepared for Commission decision within a given calendar quarter. The final month of the calendar quarter selected would be understood to be the targeted month for final action. In addition, this advisory would be given for at least 90 days prior to the start of the targeted quarter for final action. As an example, the FCC could issue an advisory November 1, 1994 that it has determined that final action is scheduled for the calendar quarter of February through April, 1995.^{1/}

By announcing a time frame for anticipated action, sufficient time would be available to the Commission in the event factors affecting that time frame intervened and caused a delay. Delays would be limited to the next month of the calendar quarter following the selected calendar quarter and so on. While acknowledging that circumstances could still intervene, which required further delay, the belief is that the Commission has the ability to narrow the potential for further delays in final action at the time it announces its selection of the targeted calendar quarter for final action.

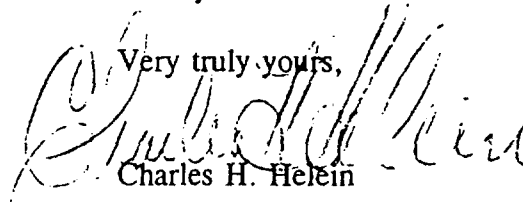
There is clearly no intention here to tie the Commission's hands in ordering its procedures, but rather to provide some guidance on the real world ramifications of Commission action announcing new standards for enhanced technologies and the long lead times involved in responding to whatever action the Commission adopts. On the other hand, the Commission and its staff are provided with the freedom to work on the details of a final decision, while all suppliers would be able to plan and put in place production schedules and time tables that avoid or minimize the dislocations caused by the uncertainty of timing described herein.

^{1/} While this approach signals important information, it still does not address the problems created if the final action is not to expand to 25 channels or to do so with significant differences in the technical standards that were proposed originally. It would, therefore, remain necessary to allow at least a 90 to 180 day post-adoption window to permit manufacturers to retool to accommodate significant changes in the standards finally adopted.

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There may be other ways to address and resolve the problem, and NAFTC is willing to work with the Commission and its staff to find those ways.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles H. Helein", is written over the typed name. The signature is fluid and cursive.

Charles H. Helein

cc: Julius Knapp, Chief
Authorization and Evaluation Division